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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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**OCT 26 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**In The Matter Of**

**Regulatory Reform for Local Exchange  
Carriers Subject to Rate of Return  
Regulation**

**Cincinnati Bell Telephone Company  
Tariff F.C.C. No. 35 and No. 40**

**CC Docket No. 92-135**

**Transmittal Nos. 636**

**PETITION TO REJECT**

**ALLNET COMMUNICATION  
SERVICES, INC**

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**Dated: October 26, 1993**

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**PETITION TO REJECT**

Allnet Communication Services, Inc. (Allnet) hereby petitions the Commission to reject the above referenced tariff transmittal filed by Cincinnati Bell Telephone Company (CBT) on October 1, 1993, which is tentatively scheduled to become effective on January 1, 1994. In this filing, CBT is electing to be regulated under the Commission's Optional Incentive Regulation (OIR) Plan which was set out in a Report and Order in CC Docket No. 92-135, In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, released June 11, 1993, FCC No. 93-253 (OIR Order). For the reasons set forth herein, the CBT tariff filing should be rejected by the Commission as patently unlawful as it fails to comply with most, if not all of the Commission's OIR Order's rules and policy objectives.

**I. CBT INCORRECTLY APPLIES OIR TO IXC AND SPECIAL ACCESS BASKETS IN VIOLATION OF SECTION 61.50 OF THE OIR RULES**

Section 61.50 (a) of the Commission's Rules states:

This section shall apply on an elective basis, to local exchange carriers for either traffic sensitive rates only or for both traffic sensitive and common

**line rates.** Carriers electing the plan for traffic sensitive rates only must participate in the Association common line pool...[emphasis added]

CBT's instant tariff filing applies OIR to its traffic sensitive, common line, special access and IXC "baskets," which is in violation of the §61.50 (a) of the Commission's OIR rules. This is evident from the fact that the proposed tariff rates are changing as follows: traffic sensitive rates are increasing by 12%, special access rates are decreasing by 1%, carrier common line rates are decreasing by 12% and IXC rates are decreasing by nearly 43%! For this reason alone, the Commission must reject the tariff as patently unlawful.

## II. **THE CBT TARIFF FILING VIOLATES SECTION 61.50(h)(1) AND (2) OF THE OIR RULES**

Section 61.50 (h)(1) and (2) of the Commission's Rules states:

(1) Except as provided in paragraph (c)(4) of this section, in connection with any optional incentive plan tariff filings proposing rate changes, the carrier must calculate an index for each affected basket as determined by the Common Carrier Bureau.

(2) In connection with any tariff filed under this section proposing changes to rates for services in the basket designated in paragraph (e) of this section, the maximum allowable increase in the carrier common line (CCL) charge shall be limited to ten percent over the two-year tariff period...

Nowhere in CBT's OIR tariff filing has CBT provided an index for each basket as required by Section 61.50(h) of the rules as the CBT OIR tariff filing is proposing rate changes contemplated and specified in the rule itself. For this reason, the Commission must reject the tariff.

Even assuming that an index is not required, which it plainly is, CBT has violated 61.50(h)(2) of the Rules by proposing rate changes to the carrier common line rates of more than 10%. Using CBT own figure in it's supporting

documentation, Exhibit 2, CCL Revenue at Current Rates (Column (E)) is \$18,525,380 and CCL Revenue at Proposed Rates (Column (F)) which is \$15,878,897, the difference is an actual reduction of 14.28%. For this reason, the Commission must reject the filing.

### **III. CBT HAS INCORRECTLY INCLUDED EXOGENOUS COSTS IN THE INITIAL OIR TARIFF FILING IN VIOLATION OF THE OIR RULES**

#### **1. CBT Improperly Includes Exogenous Costs In Its Initial OIR Filing**

The Commission's OIR Order allows carriers subject to OIR to adjust their historical costs by adjusting the costs for exogenous costs as set forth in Section 61.45(d) of the Commission's rules. Specifically, the Commission stated that "...exogenous costs, those listed for price caps in Section 61.45(d) of the Commission's Rules, should be used to adjust the historical costs used in the optional incentive plan." [OIR Order at ¶51] With respect to rate changes due to exogenous costs, the Commission clearly intended OIR to operate in the same manner as price cap regulation. The Commission stated in the OIR Order at ¶55:

As in our price cap system, carriers operating under the incentive plan can claim exogenous costs either in the biennial filing or as exogenous costs occur during the two-year rate period. [footnote number 75 also states that prospective exogenous costs are not to be considered; emphasis added]

The Commission intended that carriers electing OIR would be allowed to make rate changes during the two-year rate period for exogenous costs changes that occur during the two-year rate period -- not at the outset, and certainly not reflecting exogenous cost changes already accounted for in the ratemaking process underlying the currently effective CBT rates.

However, in setting their initial OIR rates, CBT has made adjustments to its historical costs to account for exogenous cost changes that were already accounted for in CBT's current rates that were filed on April 2, 1993 (Annual Access Tariff Filing) and on September 1, 1993 (Local Transport Tariff Filing). Nearly all of the exogenous costs changes contained in the OIR filing by CBT have been included in the rates that CBT developed in its 1993 annual access and GSF tariff filings. CBT's attempt to modify its historical costs for the initial filing by adjusting its costs for exogenous costs is contrary to the Commission's policy in the OIR Order.

Nowhere in the Commission's OIR Order does the Commission state, nor did the Commission even contemplate, that OIR participants would be able to modify their historical costs for the "initial" OIR tariff filing. To do so would be contradictory to the Commission's policy of implementing OIR -- to offer a streamlined form of regulation which should result in a reduction in rates as OIR carriers reduce costs over the two year period. As demonstrated by CBT's filing, initial OIR rates are proposed to both increase as well as decrease. The proposed price increases are directly attributable to CBT improperly adjusting its initial historical costs by exogenous costs which have already occurred. The Commission did not intend that OIR provide OIR participants an option to "game the process" and increase rates at the start of the OIR. The Commission explicitly stated that:

...historical costs enhance the optional incentive plan's efficiency incentives by minimizing opportunities for padding costs by over estimating future expenditures or investments.[OIR Order at ¶43]

By including any exogenous costs (which as discussed earlier have already

been accounted for in current rates) in the initial OIR tariff filing, CBT has effectively “padded” its costs and is attempting to contravene the Commission’s intention under OIR for carriers to reduce their costs order to retain higher earnings under the OIR plan, and therefore the Commission must reject the CBT tariff.

## **2. CBT Includes Exogenous Costs Not Permitted Under Section 61.45(d)**

Even if the Commission permits CBT to include exogenous costs from the outset, CBT has included exogenous costs in its tariff filing which are not considered “exogenous” and listed in Section 61.45(d) of the rules. An examination of COS-2, page 4 of 4, Interexchange Cost Data, Column (H)-OTHER reveals that Column (H) (the exogenous costs) “includes effects of contractual arrangements associated with interLATA toll and billing and collection.” [See note 2]

The OIR Order clearly states that “...exogenous costs, those listed for price caps in Section 61.45(d) of the Commission’s Rules, should be used to adjust the historical costs used in the optional incentive plan.” [OIR Order at ¶51] CBT does not explain what these “contractual arrangements” are, and how they can even be considered to be exogenous since “contractual arrangements associated with interLATA toll and billing and collection “ is not an exogenous cost specifically listed in 61.45(d). For this reason alone, the Commission must reject the filing.

## **IV. OTHER TARIFF/SUPPORT PROBLEMS**

Even though it has already been demonstrated that CBT’s tariff filing is in blatant violation of the OIR rules, it is necessary to highlight that CBT’s cost support contains other errors and problems which also require investigation, if

not rejection by the Commission.

Because the OIR plan is based on historical costs, it is clear that CBT must bear the burden of proof required to demonstrate that the historical costs being used to derive the proposed rates are accurate. CBT has not borne its burden of proof. CBT's D&J page COS-2, pages 1 to 4 of 4 lists total historical costs in column (A) on each page (one for each basket). Certain material submitted on COS-1(P), Table I, does not reconcile with the historical data used in COS-2. For example, on COS-2, page 4 of 4, line 100, Depreciation Expense is \$853,000, and Expenses Less Depreciation is listed as \$11,606,000. Checking Page 1.7 of 3.7 in COS-1(P), line 1190 minus line 1180, results in an amount of \$2,267,000 which should be entered on COS-2, line 110 instead of \$11,606,000 currently listed. The remaining COS-2 pages 1 to 3 all use the proper numbers for these lines contained in COS-1(P). With this type of unexplained error of over \$8 million, how can the Commission determine what is the actual historical costs for the IXC basket? In addition, CBT's base period revenue requirement listed on COS-2, page 4 of 4 of \$14,298,000 cannot be reconciled within current revenue figure of \$5,110,048 found on Exhibit 11, page 2 of 2 of its D&J. This difference is not detailed anywhere in CBT's D&J and must be explained by CBT.

Another problem presented by the tariff filing is the potentially predatory pricing of Cincinnati Bell's interstate, intraLATA toll rates it develops as a result of the OIR filing. In some instances the per message or additional MOU rates it proposes are below CBT's own access costs. CBT should be required to demonstrate that it is imputing access costs on itself as required by prior

Commission rulings.<sup>1</sup> Rates such as those for CBT's night rate, 11-22 Messages, have an additional MOU rate proposed of \$0.04, which is below CBT's own per minute access costs. CBT clearly benefits by pricing below costs to the detriment of its interstate, intraLATA competitors such as Allnet. Unless, and until CBT can demonstrate that the rates are not predatorily priced below its access costs, the Commission should reject the tariff filing as being unjust and unreasonable and unreasonably discriminatory, in violation of Sections 201(b) and Section 202(a) of the Act.

Lastly, the Commission should not allow CBT to adjust its LTR rates which have not yet even become effective. The OIR tariff filing modifies LTR rates, and it is clear from petitions filed by numerous parties that LTR tariffs have substantial shortfalls and may not take effect as filed. Should the Commission not reject the filing as patently unlawful as demonstrated herein, it should at a minimum delay the effectiveness of the tariff pending the outcome of the LTR tariffs themselves.

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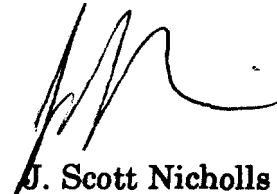
<sup>1</sup>Re: Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Service, FCC 85-172, 57 R.R.2d 1558 (1985).



**V. CONCLUSION**

For the reasons set forth herein, the Commission must reject CBT's Tariff Transmittal No. 636 as it fails to comply with the Commission's OIR rules and policies.

Respectfully submitted,  
**ALLNET COMMUNICATION  
SERVICES, INC**



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Dated: October 26, 1993

**CERTIFICATE OF SERVICE**

I, J. Scott Nicholls, do hereby certify that a copy of the foregoing Petition to Reject was served, on the parties listed below, this 26th day of October, 1993, via first class, postage prepaid, United States mail.

  
J. Scott Nicholls

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